

PLEASE COMPLETE THIS INFORMATION

RECORDING REQUESTED BY:

J. R. Simplot Company
16777 Howland Road
P.O. Box 198
Lathrop, CA 95330

WHEN RECORDED MAIL TO:

Clifford Walker, Jr.
J. R. Simplot Company
P.O. Box 198
Lathrop, CA 95330

James Maples, Assessor-Recorder
Kern County Official Records

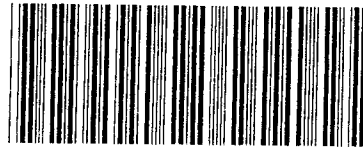
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Pages: 13

3/10/1995

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DOCUMENT #: 0195030460



0195030460

Fees 41.00

Taxes

Other

TOTAL 41.00

Stat. Types: 1

THIS SPACE FOR RECORDER'S USE ONLY

THIS PAGE ADDED TO PROVIDE ADEQUATE SPACE FOR RECORDING INFORMATION
(Additional recording fee applies)

___OR
___MD
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___RF
___NA
___ST

COVENANT TO RESTRICT USE OF PROPERTY

TITLE OF DOCUMENT



Recording Requested by:

J.R. Simplot Company
16777 Howland Road
P.O. Box 198
Lathrop, CA 95330

Attn: Clifford Walker, Jr., California Environmental Affairs Mgr

When Recorded, Mail Certified Copy to:

Department of Toxic Substances Control
Region 1 - Fresno
1515 Tollhouse Road
Clovis, CA 93611

Attn: Thomas Kovac, Chief, Fresno Responsible Party Unit

COVENANT TO RESTRICT USE OF PROPERTY

This Covenant and Agreement ("Covenant") is made on the 27th day of January, 1995 by J.R. Simplot Company, Minerals & Chemical Group ("Covenantor") who is the owner of record of certain real property situated in the County of Kern, State of California, described in Exhibit "A" attached hereto and incorporated herein by this reference ("the Property") and by the California Department of Toxic Substances Control ("DTSC") with reference to the following facts:

- A. The portion of the real property containing hazardous substances as identified in Exhibit "B" attached hereto and incorporated herein by this reference.
- B. The soil which makes up the portion of the property identified in Exhibit "B" and referred to as the canopy area, contains hazardous substances, including Dieldrin, Endrin, DDT and Toxaphene in concentrations up to 3000, 1500, 14,100 and 24,000 milligrams per kilogram, respectively. Human contact with these substances could pose unacceptable health risks. The affected soil is capped with asphalt pavement to prevent human exposure. The property is used for a variety of agricultural retail sales activities. The surrounding property is primarily agricultural, however, some residential and industrial uses also occur.
- C. The soil which makes up the portion of the property identified in Exhibit "B" and referred to as the pond area contains hazardous substances. The hazardous substances present include Dibromochloropropane and 1,2 Dichloropropane and are present in soils to a depth of approximately 210 feet below the ground surface.

- D. Covenantor desires and intends that in order to protect the present and future public health and safety, the property shall be used in such a manner as to avoid potential harm to persons or property which may result from exposure to hazardous substances which have been deposited on the portion of the property identified in Exhibit "B".

ARTICLE 1
GENERAL PROVISIONS

- 1.01 Provisions to Run with the Land. This Covenant sets forth protective provisions, covenants, restrictions and conditions (collectively referred to as "Restrictions"), upon and subject to which the Property and every portion thereof shall be improved, held, used, occupied, leased, sold, hypothecated, encumbered, and/or conveyed. Each and all of the Restrictions shall run with the land, and pass with each and every portion of the Property, and shall apply to and bind the respective successors in interest thereof. Each and all of the Restrictions are imposed upon the specific portions of the Property shown in Exhibit "B". Each and all of the Restrictions are imposed pursuant to Sections 25355.5 and 25222.1 of the Health and Safety Code and run with the land pursuant to Section 25230(a)(1). Each and all of the Restrictions are enforceable by the DTSC.
- 1.02 Concurrence of Owners Presumed. All purchasers, lessees, or possessors of any portion of the Property shall be deemed by their purchase, leasing, or possession of such Property, to be deemed by their purchase, leasing, or possession of such Property, to be in accord with the foregoing and to agree for and among themselves, their heirs, successors, and assignees, and the agents, employees, and lessees of such owners, heirs, successors, and assignees, that the Restrictions as herein established must be adhered to for the benefit of future Owners and Occupants and that their interest in the Property shall be subject to the Restrictions contained herein.
- 1.03 Incorporation into Deeds and Leases. Covenantor desires and covenants that the Restrictions set out herein shall be incorporated by reference in each and all deeds and leases of any portion of the specified portion of said Property.
- 1.04 Operation and Maintenance Agreement. The covenantor shall perform the necessary tasks and provide to DTSC the information related to both the asphalt cap maintenance and the groundwater monitoring plans. Details related to these requirements are included in an Operation and Maintenance Agreement for the facility.

In regards to the asphalt cap maintenance plans the covenantor shall annually inspect and make necessary repairs to the asphalt concrete cap covering that portion of the property identified in Exhibit "B". The purpose being the maintenance of the cap's integrity as a barrier preventing water infiltration into contaminated soils, the movement of contaminated soil in surface runoff, wind borne transport of contaminated soils and human contact with contaminated soil. This objective is to be met through any necessary repairs which are to be performed by the covenantor.

Covenantor shall continue the semiannual collection of groundwater samples and continue determining groundwater levels semiannually.

ARTICLE II DEFINITIONS

- 2.01 Department. "Department" shall mean the California State Department of Toxic Substances Control (DTSC) and shall include its successor agencies, if any.
- 2.02 Improvements. "Improvements" shall mean all buildings, or other permanent above ground structures constructed or placed upon any portion of the Property.
- 2.03 Occupants. "Occupants" shall mean those persons entitled by ownership, leasehold, or other legal relationship to the exclusive right to occupy any portion of the Property.
- 2.04 Owner. "Owner" shall mean the Covenantor or its successors in interest, including heirs, and assigns, who hold title to all or any portion of the Property.
- 2.05 Permanent. "Permanent" shall mean for the foreseeable future after the date of this Covenant until termination under section 4.02.

ARTICLE III DEVELOPMENT, USE AND CONVEYANCE OF THE PROPERTY

- 3.01 Restriction on Use. Covenantor promises to restrict the use of the portion of the Property as described in Exhibit "B" as follows:
 - (1) Covenantor shall not allow any new permanent use without first applying for and receiving a written variance from DTSC for that new use pursuant to Article IV of this Covenant and Agreement.
 - (2) Covenantor shall not permit the construction of any improvements on top of the asphalt concrete cap

covering that portion of the property identified in Exhibit "B" and shall not allow any work to be performed which could jeopardize the integrity of the cap without first applying for and receiving a written variance from the DTSC pursuant to Article IV of this Covenant and Agreement.

- 3.02 Conveyance of Property. The Owner or Owners shall provide a thirty (30) days advance notice to the Department of any sales, lease, or other conveyance of the Property or an interest in the Property to a third person. The Department shall not, by reason of the covenant, have authority to approve, disapprove, or otherwise affect any sale, lease, or other conveyance of the Property except as otherwise provided by law, by administrative order, or by reason of this Covenant.
- 3.03 Enforcement. Failure of the Owner to comply with any of the requirements, as set forth in paragraph 3.01 shall be grounds for the Department, by reason of the Covenant, to require that the owner modify or remove any improvements constructed in violation of the paragraph. Violation of the Covenant shall be grounds for the Department to file legal actions against the Owner as provided by law.
- 3.04 Notice in Agreements. All Owners and Occupants shall execute a written instrument which shall accompany all purchase, lease, sublease, or rental agreements relating to the portion of the Property described in Exhibit B. The instrument shall contain the following statement:
"The land described herein contains hazardous substances. Such conditions renders the land and the owner, lessee, or other possessor of the land subject to requirements, restrictions, provisions, and liabilities contained in Chapter 6.5 and Chapter 6.8 of Division 20 of the Health and Safety Code. This statement is not a declaration that a hazard exists."

ARTICLE IV VARIANCE AND TERMINATION

- 4.01 Variance. Any Owner or, with the Owner's consent, any Occupant of the Property or any portion thereof may apply to the Department for a written variance from the provisions of this Covenant. Such application shall be made in accordance with Section 25233, Health and Safety Code.
- 4.02 Termination. Any Owner or, with the Owner's consent, an Occupant of the Property or a portion thereof may apply to the Department for a termination of the Restrictions as they apply to all or any portion of the Property. Such application shall be made in accordance with Section 25234, of the Health and Safety Code.

- 4.03 Term. Unless terminated in accordance with paragraph 4.02 above, by law or otherwise, this Covenant shall be continued in effect in perpetuity.

ARTICLE V
MISCELLANEOUS

- 5.01 No Dedication Intended. Nothing set forth herein shall be construed to be a gift or dedication, or offer of a gift or dedication, of the Property or any portion thereof to the general public or for any purposes whatsoever.
- 5.02 Notices. Whenever any person gives or serves any notice, demand, or other communication with respect to this Covenant, each such notice, demand, or other communication shall be in writing and shall be deemed effective (1) when delivered, if personally delivered to the person being served or to an officer of a corporate party being served or official of a governmental agency being served, or (2) three (3) business days after deposit in the mail if mailed by United States mail, postage paid certified, return receipt requested:
- To: "Covenantor"
J.R. Simplot Company
Minerals & Chemical Group
P.O. Box 912
Pocatello, ID 83204
- Copy to: Department of Toxic Substances Control
Region 1 - Fresno
1515 Tollhouse Road
Clovis, CA 93611
Attention: Tom Kovac
- 5.03 Partial Invalidity. If any portion of the Restrictions set forth herein or terms is determined to be invalid for any reason, the remaining portion shall remain in full force and effect as if such portion had not been included herein.
- 5.04 Article Headings. Headings at the beginning of each numbered article of this Covenant are solely for the convenience of the parties and are not a part of the Covenant.
- 5.05 Recordation. This instrument shall be executed by the Covenantor and by the Director, California Department of Toxic Substances Control or his designee. This instrument shall be recorded by the Covenantor in the County of Kern within ten (10) days of the date of execution.
- 5.06 References. All reference to Code sections include successor provisions.

IN WITNESS WHEREOF, the parties execute this Covenant as of the date set forth above.

Owner: J.R. Simplot Company
Minerals & Chemical Group

By: _____

Title: President

Date: January 24, 1995

Attest: _____

Ronald N. Graves, Secretary

Department of Toxic Substances Control

By: _____

Title: Chief of Site Mitigation

Date: Dec. 8, 1994

STATE OF IDAHO
County of Bannock

On January 24, 1995, before me, the undersigned, a Notary Public in and for said state, personally appeared C. Larry Hinderager, known to me to be the Senior Vice President, of J. R. SIMPLOT COMPANY, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.

(S E A L)

Mesa Dawn England
Notary Public in and for said County and State

STATE OF IDAHO
County of Ada

On January 27, 1995, before me, the undersigned, a Notary Public in and for said state, personally appeared Ronald N. Graves, known to me to be the Secretary, of J. R. SIMPLOT COMPANY, the corporation that executed the within instrument and acknowledged to me that such corporation executed the same.

WITNESS my hand and official seal.



Laura A. Brunson
Notary Public in and for said County and State

STATE OF CALIFORNIA
County of SACRAMENTO

On DECEMBER 8, 1994, before me,
the undersigned, a Notary Public in and for said state,
personally appeared Allen K. Wolfenden, known to me to be the
Chief, Accelerated Remedial Actions Program Branch of the
Department of Toxic Substances Control, the agency that executed
the within instrument and acknowledged to me that such agency
executed the same.

WITNESS my hand and official seal.

(S E A L)

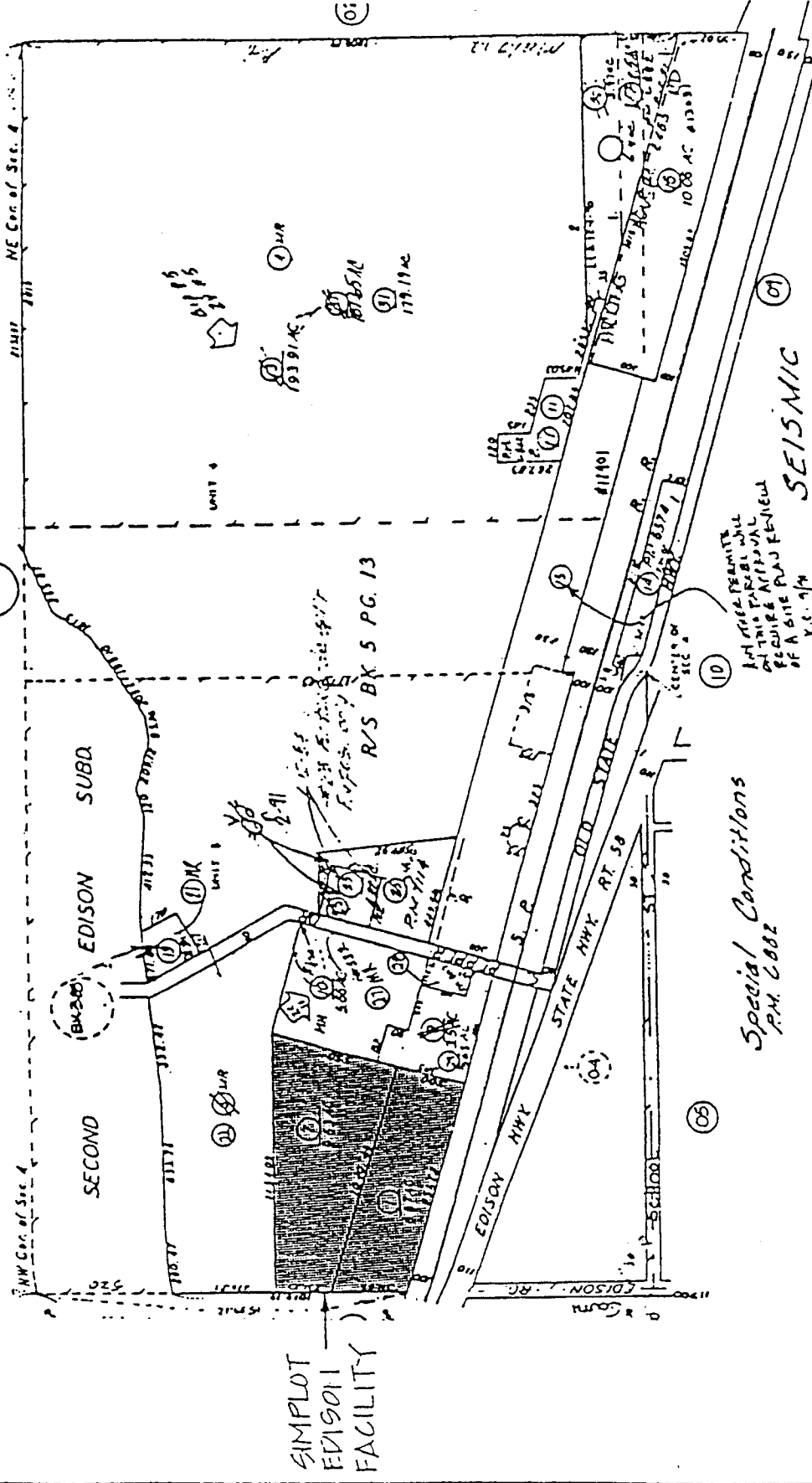
Nancy L. Lentsch
Notary Public in and for said
County and State



177-03

PTN. OF SEC. 4 T. 30 S. R. 28 E.

Edison
SCHOOL DIST 66-3
66-16
177-0



ASSESSOR'S PARCEL MAP

JOB NO. 190218

Exhibit A

EXHIBIT B
SURVEY OF RESTRICTED AREA

LEGAL DESCRIPTION
FOR SIMPLOT

All those portions of the Northwest Quarter of Section 4, Township 30 South, Range 29 East, M.D.M., Kern County, California, being more particularly described as follows:

Parcel 1 (Pond Area)

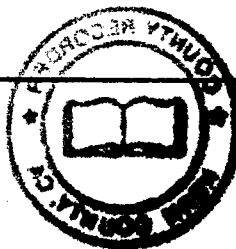
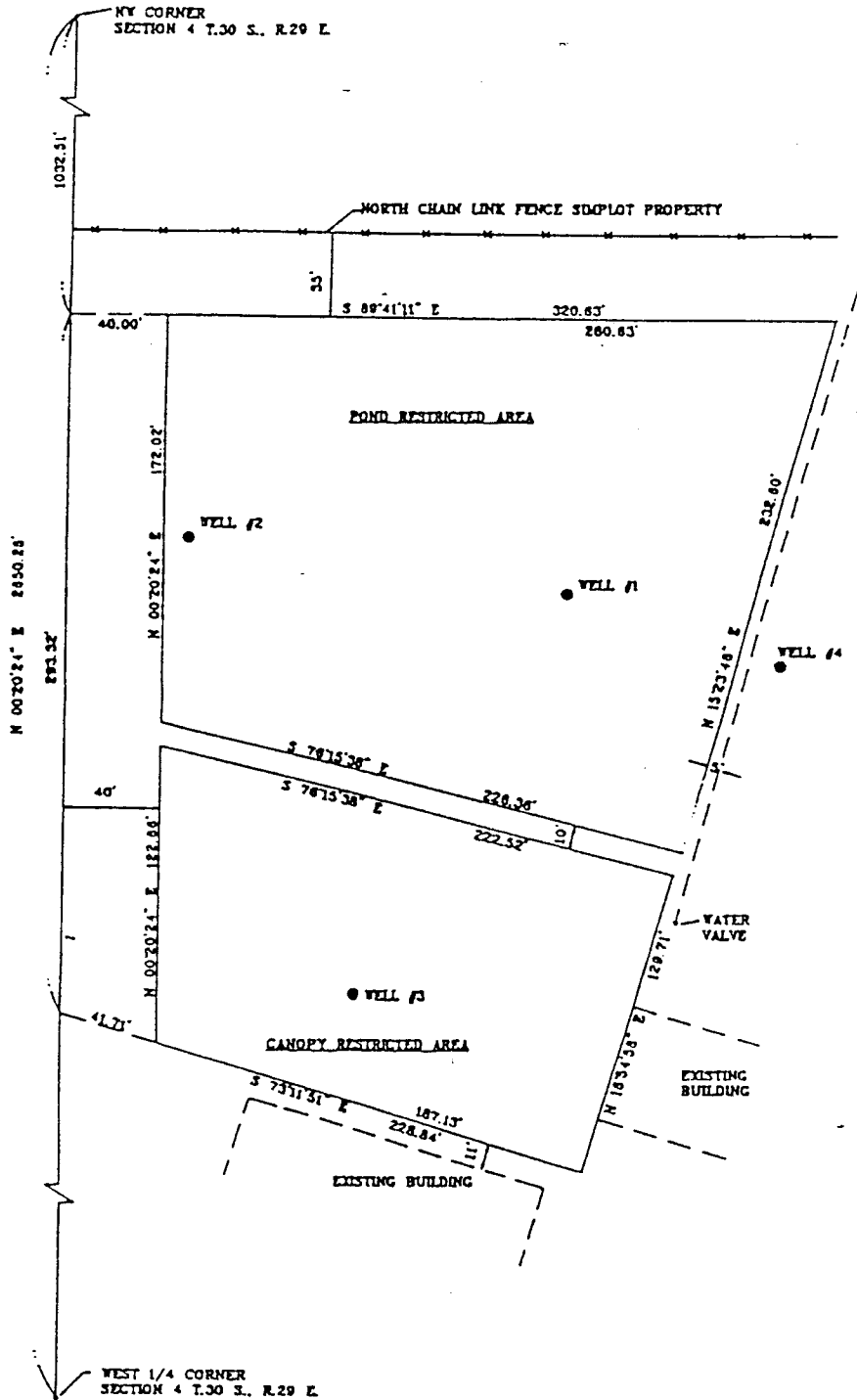
Commencing at a point on the West line of said Northwest Quarter from which point the Northwest corner thereof bears N00°20'24"E, 1032.51 feet; thence S89°41'11"E, 40.00 feet to the True Point of Beginning; thence continuing S89°41'11"E, 280.63 feet; thence S15°23'48"W, 232.60 feet; thence N76°15'38"W, 226.36 feet; thence N00°20'24"E, 172.02 feet to the True Point of Beginning.

Containing 1.158 acres, more or less.

Parcel 2 (Canopy Area)

Commencing at a point on the West line of said Northwest Quarter, from which point the Northwest corner thereof bears N00°20'24"E, 1325.83 feet; thence S73°11'51"E, 41.71 feet to the True Point of Beginning; thence continuing S73°11'51"E, 187.13 feet; thence N16°54'58"E, 129.71 feet; thence N76°15'38"W, 222.52 feet; thence S00°20'24"W, 122.86 feet to the True Point of Beginning.

Containing 0.583 acres, more or less.



This is a true and correct copy of the original as recorded in the public records of the County of Kern, California.

JAMES W. MARSH, Assessor - Records
Kern County, California

County